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ABSTRACT

In the case of *Ingraham vs. Wright*, the United States Supreme Court ruled that under the eighth amendment school children do not have constitutional protection from the use of corporal punishment. The majority decision relies heavily on assumptions concerning the tradition and effectiveness of the use of corporal punishment in education. In an initial series of investigations, this article demonstrates the fallaciousness of the majority's assumptions. Corporal punishment is not "rarely abused." It does not serve "important educational interests" and its elimination does not result in a lack of "responsibility and decorum." Additional assumptions are also discussed. (Author)

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A SOCIAL SCIENCE REVIEW OF EVIDENCE
CITED IN LITIGATION ON CORPORAL
PUNISHMENT IN THE SCHOOLS¹

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During the Twentieth Century, American society through its judicial and educational establishments has recognized increasingly that children are citizens. While parents' and citizens' groups have lobbied and worked for reform legislation, there is little question that the judicial system has aided in the recognition of the rights of children. However, it is becoming increasingly obvious that the Nixon appointees to the Supreme Court, in concurrence with the previous conservative element have moved away from the recognition of children's rights as citizens within the context of the public schools. Perhaps one of the most far reaching decisions in the current backward spiral of the Supreme Court attitude occurred on April 19, 1977, when the United States Supreme Court ruled that the cruel and unusual punishment clause of the Eighth Amendment did not apply to the use of corporal punishment on public school children. In the case of Ingraham vs. Wright, 45 LW 4364, the Supreme Court not only refused protection (under the Consti-

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tution) for children against corporal punishment but they held that the due process clause of the Constitution does not require notice and hearing prior to the imposition of corporal punishment. The minority opinion written by Justices White, Brennan, Marshall and Stevens outlines the obvious legal inconsistencies apparent in the majority opinion. Two of the more glaring inconsistencies relate to the question of due process and the relation between the use of physical punishment on prisoners versus citizens. The majority decision indicated that in the case of corporal punishment in the schools, the actual punishment may be meted out before any due process occurs. In effect, due process then would have no use at all since the child would have been already punished under the assumption of guilt. However, it is even more disturbing that the decision indicates that school children are the only persons in our society that may be officially punished by the use of physical force. As a result of this decision, it is apparent that children who have been convicted of juvenile crimes and placed in institutions may not be hit and are protected as are all other prisoners in institutions. However, children in those same institutions who have been committed because of emotional or intellectual deficits and have not gone through the courts in terms of criminal procedures will be eligible for corporal punishment. In essence, a child in the schools would only be protected from the use of corporal punishment if he were convicted of a crime.

The legal and educational implications of the Supreme Court decision in *Ingraham vs. Wright* have far reaching effects. However, the purpose of this paper is not to present an extensive legal analysis of that decision but rather to discuss underlying assumptions that appear to have led the majority to rule against plaintiffs. To frame this discussion, a brief historical review is presented.

Approximately three years ago, Adah Maurer, the Founder of the Movement to End Violence Against the Next Generation (EVAN-G), and Alan Reitman, Associate Director of the American Civil Liberties Union, met with me and encouraged the establishment of a national center for the study of corporal punishment at Temple University. Although EVAN-G had begun an effective lobby group and the ACLU was handling individual cases, there was a need to establish a research and information dissemination center within a major university. Through the efforts of the American Psychological Association, the former National Committee to Abolish Corporal Punishment in the Schools, and other organizations, the National Center was established three years ago with a small grant from Mr. James Wallerstein, President of the Randen Foundation. The Center is located in the Department of School Psychology at Temple University and has become a central repository and dissemination center for information regarding corporal punishment and alternative disciplinary measures. As the Center began opera-

tion, Judge Gertrude Bacon of New York City and myself became involved in the Ingraham vs. Wright case through submission of an Amicus brief on behalf of the Task Force on the Rights of Children and Youth of the American Psychological Association. Contact by the Center with a variety of organizations and individuals associated with the case resulted in a decision to examine closely the moral, social, educational and psychological factors affecting the progress of the case and the final decision. Following the publication of the Supreme Court decision, the staff of the Center, consisting of graduate students and another professor in school psychology, met with Ms. Virginia Lee from the Center for Law and Education located in Cambridge, Massachusetts. The Center is a backup research service for the Legal Services Corporation of the United States. Ms. Lee is an expert in children's rights and deals with the problems of corporal punishment and suspensions as a legal researcher for the Center for Law and Education. The meeting with Ms. Lee resulted in an analysis of the attitudes and opinions which appear to underlie the legal interpretations made by the majority of the Supreme Court. It was decided to look closely at these underlying assumptions and, if possible, conduct research to determine the data base for those assumptions.

The following sections of this paper present the assumptions which appear in the Supreme Court decision and a description of some of the research efforts to test those assumptions.

This paper borrows liberally from the works of Ms. Lee and students who will be referenced.

Assumption: Corporal Punishment is Rarely Abused

Underlying the assumption of the rarity of abuse of corporal punishment is the opinion suggested in the brief of the Miami Dade County School Board which indicated that "moderate use of corporal punishment is a rare alternative to more drastic exclusionary devices" (Howard, p. 11). Although this latter was not directly stated in the majority opinion written by Justice Powell, he does indicate the belief that physical injury rarely occurs as a result of corporal punishment and that when physical injury does occur it is rarely severe.

In order to understand Powell's statement it is important to define "physical injury" and the actual meaning of "rare". Is redness of skin tissue as a result of paddling considered injury? Depending on the force and number of blows, the redness increases and eventually hematoma results. Dr. David Friedman (1977) presented an excellent paper outlining the many physical dangers inherent in the use of corporal punishment. Included are broken blood vessels, massive fat emboli, sciatic nerve damage, damage to gluteal muscles and even hemorrhages in the brain. In a case in Michigan, a child suffered hearing loss because of paddling (Lee, 1977). In most cases of corporal punishment, the damage does not require hospitalization, however, abuse may be defined as the actual infliction of bodily

changes as the result of force rather than by the need for medical attention.

Powell's statement about "rareness" was analyzed. Webster's New Collegiate Dictionary defines rareness as "infrequent or seldom occurring events" (Webster, 1973, p. 957). If one assumes that any bodily changes which occur as a result of a physical blow may be considered abuse of the body of the recipient, then data should indicate the extent and severity of the use of corporal punishment in order to answer Powell's contention. Under the assumption that corporal punishment is rarely abused, are the statements of Powell which indicate that there is little risk of error in paddling. Research on teacher behavior in disciplinary situations indicates that there are many teachers who are poor disciplinarians. Their classroom management is often characterized by the use of incorrect targeting of students for discipline. Findings by Kounin (1970) and others (Hyman, 1972) suggest that there is a great deal of error in disciplinary practices by teachers.

At the National Center, two efforts have begun in order to test the assumptions concerning the severity and extent of corporal punishment. We have begun the development of a case book in which all incidents of corporal punishment are categorized by type. This case book has been made possible by the use of a press clipping service that is utilized by Adah Maurer in the production of her Newsletter, "The Last Resort". Further, we have a national network of Friends of the Center who send us

clippings and information concerning legal cases where corporal punishment has been used to the extent of severe physical harm. While the actual statistical incidence of reported severe abuse is small, there is enough evidence from the reported cases, which are just the tip of the iceberg, to indicate that abuse is not rare.

In reference to the extent of the use of corporal punishment, a number of studies show that large numbers of children are corporally punished each year (Hyman, McDowell, Raines, 1978). However, in an effort to gather more data, staff at the National Center has conducted a study using information collected by the Office of Civil Rights in their most recent survey of school practices regarding suspensions and corporal punishment with minority children (Glackman, Martin, Hyman, McDowell, Berv, and Spino, 1978). In this study, the investigators examined the raw data available at the Federal Regional office in Philadelphia. Because of the large number of returns, it was decided to draw a random sample which represented 1.5% of 7,673 public schools in the five-state area including Pennsylvania, Maryland, West Virginia and Delaware. This sample represented 73,643 students from the schools selected. Unfortunately, the data did not indicate whether students were hit more than once but only recorded number of corporal punishments per school. Assuming, however, for statistical purposes that each incident reported was for a different child, it was found that out of 73,643 enrolled students, there were 4,335 incidents of corporal punish-

ment. This indicates that 5.9% of students or one out of every 17 students may have received corporal punishment during the year of the report. However, the data varied among schools. For example, one elementary school reported 205 incidents of corporal punishment for a student population of 375 while another reported only two incidents for 550 students. It is obvious that a figure of 6%, while not massive, certainly does not suggest the rarity of occurrence indicated in the thinking of many of the lawyers and friends of the court who supported the use of corporal punishment in the case of *Ingraham vs. Wright*. The Center is currently planning a larger study and hoping that the Office of Civil Rights will publish national figures based on their computerized data. In summary, it appears that the Supreme Court's assumption about the rarity of the abuse and their underlying assumption about the rarity of its use is not supported by the data available.

Assumption: Corporal Punishment is an Effective Form of Discipline Serving Important Educational Interests

Unfortunately, the evidence reviewed by the Supreme Court did not indicate that they did a comprehensive review of educational research on punishment. At the time of the writing of the brief on behalf of the APA Task Force on the Rights of Children and Youth, the time limitation and early development of the Center did not make possible the presentation of the data now available. In order to test the assumption regarding

the effectiveness of punishment, two doctoral graduate students in school psychology reviewed the literature on punishment for the last ten years. This literature included both animal and human studies. A paper written by Bongiovanni (1978) and published by the Center and National Institute of Education seriously challenges the efficacy of the use of corporal punishment in the schools. While it is obvious that physical punishment, especially as it becomes more severe, tends to suppress the punished behavior, there are many undesirable consequences. There is research evidence that the infliction of pain often results in operant and elicited aggression which are counter productive in terms of "important educational interests". Although there has been no research using experimental and control groups with corporal punishment as the independent variable, there are studies which have examined other forms of punitiveness (Rosenshein and Furst, 1971; Lamberth, 1978). These studies indicate that student achievement is negatively correlated with the use of criticism, threats and the resulting punitive atmospheres created by these teacher behaviors. Corporal punishment may be readily conceptualized as the extreme form of expression of criticism and anger (Hyman, Bongiovanni, Friedman, and McDowell, 1977). Some evidence indicates that the increasing use of corporal punishment is correlated with increasing vandalism in schools. A study supporting this contention was conducted by a group in Portland, Oregon. The researchers were a committee of citizens

and unfortunately the results are not published in a scientific journal. However, at the Center, several students are currently pursuing a similar study which will lead to at least one doctoral dissertation. In this study, data from the Office of Civil Rights are being gathered which indicate the rate of corporal punishment in schools. This will be correlated with insurance rates for vandalism by use of a mailed questionnaire. This study is currently in process and we are attempting to obtain a small grant to support its completion. If the suggested correlation between corporal punishment and vandalism is found, this will further reinforce animal and human studies suggesting that the use of violence only leads to counter violence (Bongiovanni, 1978). It is apparent from the reviews cited that Powell can not cite the scientific literature to support his assumption concerning important educational interests served by the use of corporal punishment. However, there is another way to conceptualize his concerns.

Implicit in the Supreme Court's decision is the historical and moral value system of what was and to some extent still is essentially a Puritan society. This thinking was apparent in the statement by Justice Powell who notes that "paddling of recalcitrant children has long been an acceptable method of promoting good behavior and instilling notions of responsibility and decorum into the mischievous heads of school children" (Ingraham vs. Wright, 45 LW 4366). If Justice Powell's assumptions are correct, the elimination of corporal punishment should

result in a lack of "responsibility and decorum" which would affect the learning climate. Powell reinforces this assumption by quoting previous litigation which indicated that the states may impose corporal punishment "for the proper education of the child and the maintenance of group discipline" (Ingraham vs. Wright, 45 LW 4367). One way to test the assumption of the necessity of the use of corporal punishment is to examine those schools which do not use it and compare the disciplinary atmosphere between the times of the use and elimination of corporal punishment. In order to examine the assumption, a two-stage study has been conceptualized. The first stage has been completed and will be reported here. Farley, Kreutter, Russell, Blackwell, Finkelstein and Hyman (1978) developed a list of 59 school districts which were reported to have eliminated corporal punishment as a practice in their schools. The schools were contacted by telephone and those which responded were interviewed by use of a structured questionnaire. The person most often responding was the Superintendent. However, in some cases the Assistant Superintendent or Director of Pupil Personnel Services responded. Thirty-three school districts were interviewed. While many others returned the calls, the schedule of interviewers available was such that many could not be questioned. The responding schools represent about two million students who function in educational atmospheres without the use of corporal punishment. Approximately 69% of the responding schools

had eliminated corporal punishment within the last ten years. Without presenting this whole study here, some of the interesting findings are reported.

While there were differing responses regarding changes in the frequency of disciplinary problems following the elimination of the use of corporal punishment, only one district reported a belief that increase in problems resulted from the elimination of corporal punishment. Fifteen districts (42%) reported no change in the number of disciplinary problems; 12 districts (33%) were unable to respond to the question; 5% reported a decrease in the number of disciplinary problems. This data would certainly suggest that there were no noticeable changes in discipline as a function of the elimination of corporal punishment. While the major aspect of this study was to test the assumption of the Supreme Court that corporal punishment is necessary for effective discipline, we also questioned the respondents as to alternatives which they were using. Each school responded with an average of three methods of discipline most often used in their school district. These included suspension, parent conferences, counseling, preventative measures included problem committees, crises information centers, social workers, core teams, in-service training, teacher consultation and others. Also listed were the use of detention, chores, student rights and responsibility programs, special education services, expulsion, behavior modification, discussion, court referral, rehabilitation, and lectures. While, unfortunately, 69% of

the schools responded most frequently with the use of suspension as an alternative to corporal punishment, it is obvious that many schools have a more sophisticated repertoire of disciplinary procedures.

A study recently completed by two Center staff members suggests some other interesting consequences of the use of corporal punishment which challenge Justice Powell's assumptions regarding the effectiveness of corporal punishment. McDowell and Friedman (1978) conducted a regional examination of editorial opinion following the Supreme Court decision. As part of the analysis they ran rank order correlations of the opinions by region against selected demographic variables for those regions. There were significant positive correlations between editorial opinion against corporal punishment and income spent on education (.750), per cent of populations completing high school (.717), illiteracy rates (.65) and per cent of psychological personnel as a percentage of total instructional services (.417). These are correlation figures and, of course, do not suggest causation. A chi square analysis further indicated statistical significance for differences between regions. The northeast and mid-Atlantic states reflect more editorial opinions against the Supreme Court decision and the southern and southwestern states are more favorable in terms of editorial opinion. Whether this reflects actual population opinion is another question which we hope to investigate.

The evidence thus far presented suggests that Justice Powell is incorrect in his assumptions about the use of corporal punishment as an efficacious way of maintaining order and decorum. In fact, the research indicates that use of corporal punishment may well be counter productive.

Assumption: Corporal Punishment is an Accepted Form of Discipline and There is No Trend Toward its Elimination

The Supreme Court's decision concerning corporal punishment constituting a violation of the Eighth Amendment relied heavily on historical and contemporary approval of reasonable corporal punishment. The Court considered few scholarly opinions on this subject because they did not have an integrated body of data. Powell indicates "yet we can discern no trend towards its elimination" (Ingraham vs. Wright, 45 LW 4366). Powell makes a strong argument for the continuation of corporal punishment because there is no trend away from its use. However, as part of the study on alternatives to corporal punishment mentioned previously (Farley, et.al., 1978), the National Center is determining whether or not it is true that there is no discernible trend towards the elimination of corporal punishment. Although we are currently observing a movement for "back to basics" and a more conservative trend towards discipline, the study conducted by the Center indicates that historically there is a trend away from the use of corporal punishment. We are able to identify over 50 school districts, some of them the largest in the country including New York, Chicago and

Baltimore, which have eliminated the use of corporal punishment. Many of the school districts in the survey had eliminated it within the last ten years while the oldest elimination was in New Jersey which occurred in 1867. More recently, Maine and Hawaii have eliminated the use of corporal punishment now indicating that four states, plus many schools and districts have eliminated the use of corporal punishment (Hyman and Friedman, 1977). Data indicated that of the districts surveyed, there was a distribution of all socio-economic classes and that there were a number of reasons for the elimination of corporal punishment. Twenty-two per cent of the districts reported that corporal punishment was felt to be ineffective. Additionally, 9.8% felt that there are better ways to achieve positive discipline and 7.3% of the districts felt that there are equally effective measures. The commonly stated use for its elimination included community pressure, reactions to bad incidents, legal administrative decision, protection of the school from lawsuits, the conviction that corporal punishment is inhumane, and the commitment to student's rights. Therefore, the data available and ignored or unknown to the Supreme Court, is that there has been a gradual turning away from the use of corporal punishment and therefore one might discern a societal trend.

In order to conduct a more thorough study of what is occurring in school districts where corporal punishment has been eliminated, the Center is currently developing a study

which will be questionnaires. While the original study depended upon responses by high school officials, the current questionnaire will be sent to the vice-principals, disciplinarians and those who have an actual on-line role in discipline. The survey will be sent to a sample of districts using corporal punishment and those which have eliminated it for comparison purposes. The survey instrument describes specific discipline situations and lists alternatives with the hope that respondents will indicate the likelihood of various disciplinary measures being used in the situations described. In this manner the Center, for the first time in educational history, as far as we can determine, will survey the extent and use of a variety of methods used in public schools to discipline children. This will provide a great deal of data as to accepted and effective forms of discipline which the Supreme Court ignored.

Schools are Open Institutions

Justice Powell's decision suggests the assumption that schools are open institutions and therefore children do not need protection under the Eighth Amendment. While this assumption is somewhat harder to test from a research point of view, it certainly could be investigated by attitude or opinion surveying of parents of children in the schools. This is an area which must yet be investigated by the Center. However, Justice Powell seems to believe that all schools are open to public scrutiny and that they are in some sense supervised by the

community. The present writer would certainly challenge the assumption after 20 years of experience at every level in the public schools. It is the exception rather than the rule where a school district has active participation of parents and community members within the ongoing practices. The files of the American Civil Liberties Union have many examples of schools repeatedly, often secretly and often without fear, violating already established liberties of children (Hyman and Schreiber, 1974).

The material cited previously in the paper relates to a social science analysis of the Supreme Court decision on *Ingraham vs. Wright* which was developed by Virginia Lee of the Center for Law and Education. Other questions which may be investigated have to do with due process issues raised by the majority opinion of Justice Powell. However, these have presently not been attended to by the Center as other questions are being examined in relation to other litigation involving corporal punishment.

An important area of litigation has to do with civil rights. There is evidence that minority children receive a higher proportion of corporal punishment than their peers. A study in California tended to support this as did some work in the Pittsburgh schools (Hyman, et.al., 1977). In order to take a closer look at this data, the Center organized a study, which is partially reported earlier in this paper, in regard to the extent of the use of corporal punishment. The Office of Civil

Rights survey data were analyzed in terms of the use of corporal punishment by race. From the data available, the analysis revealed very clearly that minority children, particularly males, are corporally punished far more than their white peers, sometimes at a ratio of 4 to 1. Further, the analysis changes from elementary to secondary school indicating that the rate for whites drop as they reach secondary school but it does not drop for minority males or black females. It does drop for females of minority groups other than black. The figures suggest that (a) teachers may be less tolerant of the kinds of behavior exhibited by minority groups, (b) that minority group members may exhibit more inappropriate behavior as defined by society or (c) the rates of inappropriate behavior of all racial groups may be about equal but corporal punishment is used to a greater extent to "correct" the transgressions of minority groups.

Another legal issue has to do with minority rights vis-a-vis sex differences. The data from the study indicated large differences for males vs. females suggesting that either males misbehave more than females or that society feels males as a group are more able to "take" corporal punishment. Certainly there appears to be a case for sex discrimination.

In the brief by Frank Howard on behalf of the Dade County School Board, it was stated that "the moderate use of corporal punishment is a rare alternative to more drastic exclusionary

devices" (Howard, p. 11). This argument implies that not only is corporal punishment used rarely, as has been discussed previously, but that it is often used in preference to suspension which is considered by most educators to be more drastic. The argument is often stated that it is better to paddle children than to suspend or to expel them. While this argument is not based primarily on legal issues, it does form an underpinning for the societal support of the use of corporal punishment. Is it then true that corporal punishment is often used rather than using more serious exclusionary measures. If this were true, one would expect a negative correlation between the use of corporal punishment and the use of suspension. In order to examine this question, the data collected from the Office of Civil Rights survey was utilized. When the overall rate of corporal punishment and suspensions for each of the schools sampled was determined, they were analyzed by the use of a Pearson Product Moment correlation. The resulting correlation coefficient was $+0.23$ indicating a small positive correlation between the use of corporal punishment and suspensions. There is an indication that schools which use a high rate of corporal punishment tend also to use a high rate of suspension. This finding offers serious doubt that corporal punishment is used as an alternative to suspension. Rather it suggests that the atmosphere of punitiveness towards children in school results in the use of both methods, each of which is considered by many educators to be counter productive to learning.

There is little doubt that the Supreme Court decision in *Ingraham vs. Wright* has eliminated the major method to abolish corporal punishment on Constitutional grounds. However, it is important to examine some of the assumptions underlying the Supreme Court decision in the hopes that eventually court cases will find their way to a Constitutional solution to this problem. Meanwhile, the testing of the assumptions underlying the legal interpretations certainly forms the basis for the accumulation of knowledge in this very important area. It is hoped that the efforts of the Center in cooperation with the Center for Law and Education and other legal groups including the American Civil Liberties Union will result in a massive amount of data which will build towards use in various cases of litigation and legislative change throughout the country. The Center with its research potential is interested in the identification of other social assumptions which underlie litigation in the area of school discipline. Whenever possible, within the financial limitation of the Center, questions will be examined by use of appropriate scientific methods.

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